



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 23, 2019
MOAHR Docket No.: 19-006092
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on October 21, 2019, from Detroit, Michigan. The Department was represented by Taylor Jenkins, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and was self-represented. Julie McLaughlin, Family Independence Manager and Hearings Facilitator, sat in on the hearing because Agent Jenkins was located in a different facility.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for FAP?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on [REDACTED], 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to disclose receipt of benefits from another state.

2. The OIG **has** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department as well as the State of Delaware.
4. Respondent **was** aware of the responsibility to truthfully and accurately answer all questions on forms submitted to the Department as indicated by her signature on the Application dated December 23, 2017.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is December 2017 through February 2018 (fraud period).
7. During the fraud period, Respondent was issued \$1,105.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,105.00.
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (October 2018), p. 8; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13

(emphasis in original); 7 CFR 273.16(c) and (e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of the FAP because she received concurrent FAP benefits from Michigan and Delaware.

Federal Regulations provide with respect to FAP recipients residency requirements that:

- (a)** *A household shall live in the State in which it files an application for participation.* The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. *No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her.* Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

7 CFR 273.3 (emphasis added).

To support its case, the Department presented Respondent's Michigan Application for FAP benefits dated December 23, 2017, on which she lists a Michigan mailing address and that she is not currently receiving any food assistance. As a result of this Application, the Department issued FAP benefits to Respondent for the remainder of December 2017 in the amount of \$97.00 and \$504.00 for January and February 2018.

At some point, as a result of a PARIS Interstate Match, the Department became aware that Respondent was potentially receiving food assistance benefits from the State of Delaware. The Department then confirmed that Respondent was a Michigan resident via her EBT usage history and contacted Delaware to determine her recipient status. Respondent was a recipient of Delaware issued food benefits from July 10, 2017 through February 28, 2018. She was also a recipient of Medicaid benefits for the same period from Delaware.

The Department has no record of Respondent ever reporting her receipt of benefits from Delaware and once it was confirmed, the Department promptly closed her FAP case.

According to Respondent, when she moved to Michigan, she contacted the State of Delaware and advised them to close her food assistance benefits. Respondent was unable to identify when she contacted Delaware and indicated it could have been before or after her Application in Michigan. Respondent believes she contacted Delaware a second time when she received word from the Department that her benefits were not closed. Since Respondent had requested that her Delaware benefits be closed, Respondent indicated that she was not receiving other food benefits because she was expecting her case to close. In reviewing case comments around the time of Respondent's Application, Respondent informed the Department during a conversation with her case worker about concurrent receipt of benefits that she had been living in Michigan for over a year. Despite allegedly living in Michigan for over a year, Petitioner provided a Delaware identification card to the Department at the time of her Application which was issued to her on August 14, 2017. Given Respondent's inconsistent statements about her location, her testimony is not credible that she contacted Delaware requesting to stop her benefits especially because she was not able to provide any details about when the request was made.

Respondent was advised of the responsibility to truthfully and accurately answer all questions on the Application for benefits. She was also advised of the responsibility to report changes in household circumstances to the Department. Respondent failed to report her receipt of Delaware food benefits to Michigan and misrepresented her circumstances on her Application. Since Respondent's testimony is not credible, the most reasonable explanation for her failure to report receipt of Delaware food benefits was so that she could receive benefits from both states at the same time. Therefore, the Department has satisfied its burden of proof by clear and convincing evidence that Respondent committed an IPV.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15. Clients are disqualified for 10 years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16; 7 CFR 273.16(b)(1) and (5). A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV. However, the Department concedes that Respondent did not misrepresent her identity or residency on the Application; therefore, the Department only requested a one-year disqualification from the FAP. No evidence was presented of a prior IPV. Respondent is subject to a one-year disqualification under the FAP.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6; 7 CFR 273.18(c)(1).

In this case, the Department alleged a \$1,105.00 FAP OI for December 2017 through February 2018 based upon concurrent receipt of benefits. As discussed above, a client is not entitled to the receipt of food assistance benefits from more than one state. A review of the evidence presented shows that Respondent received food benefits from Delaware for each month of the fraud period and was issued Michigan FAP benefits in the amount of \$1,105.00 from December 2017 through February 2018. Therefore, the Department has established an OI of FAP benefits issued to Respondent during the fraud period of \$1,105.00.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **received** an OI of program benefits in the amount of \$1,105.00 from the FAP.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$1,105.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.

AM/cg



Amanda M. T. Marler
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party

